

N.Y.S.D. Case #
10-cv-7427(JSR)

12-3023-cv

Biomed Pharmaceuticals, Inc. v. Oxford Health Plans (NY), Inc.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of June, two thousand thirteen.

PRESENT: DENNIS JACOBS,
Chief Judge,
CHRISTOPHER F. DRONEY,
Circuit Judge,
JOHN F. KEENAN,
District Judge.*

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BIOMED PHARMACEUTICALS, INC.,
Plaintiff-Appellant,

-v.-

12-3023-cv

OXFORD HEALTH PLANS (NY), INC.,
Defendant-Appellee,

OXFORD HEALTH INSURANCE, INC.,
UNITEDHEALTH GROUP INCORPORATED,
Defendants.

* Judge John F. Keenan, of the United States District Court for the Southern District of New York, sitting by designation.

1 **FOR APPELLANT:**

MARCOS DANIEL JIMENEZ (Michael Dillon, McDermott Will & Emery LLP, New York, New York, on the brief), McDermott Will & Emery LLP, Miami, Florida.

7 **FOR APPELLEE:**

MICHAEL H. BERNSTEIN (John T. Seybert, on the brief), Sedgwick LLP, New York, New York.

11 Appeal from a judgment of the United States District
12 Court for the Southern District of New York (Rakoff, J.).
13

14 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
15 **AND DECREED** that the judgment of the district court be
16 **AFFIRMED.**
17

18 Biomed Pharmaceuticals, Inc. appeals from the judgment
19 of the United States District Court for the Southern
20 District of New York (Rakoff, J.), dismissing Biomed's
21 complaint after a bench trial. We assume the parties'
22 familiarity with the underlying facts, the procedural
23 history, and the issues presented for review.
24

25 Biomed, a provider of injectable medications, sued
26 Oxford Health Plans (NY), Inc., under the Employee
27 Retirement Income Security Act ("ERISA"), 29 U.S.C. §
28 1132(a)(1)(B) (allowing a beneficiary to bring a civil
29 action for benefits due under a plan), after Oxford reduced
30 payments to Biomed for services that Biomed provided to a
31 boy suffering from hemophilia. After discovering that
32 Biomed had waived the patient's deductible and coinsurance
33 obligations, Oxford launched an investigation and ultimately
34 concluded that the waivers granted by Biomed were
35 fraudulent. Because the deductible and coinsurance
36 obligations were unpaid and no valid waiver had been
37 granted, Oxford stopped paying Biomed the full amount
38 charged.
39

40 After a bench trial, we review a district court's
41 factual findings for clear error and its legal conclusions
42 de novo. Giordano v. Thomson, 564 F.3d 163, 168 (2d Cir.
43 2009). On de novo review of a claim of denial of benefits,
44 we apply the same standard that the district court applied

1 to the ERISA fund administrator's decision. McCauley v.
 2 First Unum Life Ins. Co., 551 F.3d 126, 130 (2d Cir. 2008).
 3 When (as here) an ERISA fund administrator has discretionary
 4 authority to deny benefits, we review the denial of benefits
 5 under a deferential "arbitrary and capricious" standard.
 6 Hobson v. Metro. Life Ins. Co., 574 F.3d 75, 82-83 (2d Cir.
 7 2009). "Under the arbitrary and capricious standard of
 8 review, we may overturn a decision to deny benefits only if
 9 it was without reason, unsupported by substantial evidence
 10 or erroneous as a matter of law." Pagan v. NYNEX Pension
 11 Plan, 52 F.3d 438, 442 (2d Cir. 1995) (internal quotation
 12 marks omitted). An administrator that both evaluates and
 13 pays claims for benefits has a conflict of interest, and a
 14 reviewing court "should weigh the conflict as a factor in
 15 its analysis." Durakovic v. Bldg. Serv. 32 BJ Pension Fund,
 16 609 F.3d 133, 138 (2d Cir. 2010).

17
 18 Under the relevant provision of ERISA (Section 502,
 19 codified at 29 U.S.C. § 1132), "[a] civil action may be
 20 brought . . . by a participant or beneficiary . . . to
 21 recover benefits due to him under the terms of his plan."
 22 29 U.S.C. § 1132(a). ERISA plaintiffs are thus "required to
 23 prove their case; to establish that they were entitled to
 24 that benefit pursuant to the terms of the Contract or
 25 applicable federal law." Juliano v. Health Mgmt. Org. of
 26 N.J., Inc., 221 F.3d 279, 287-88 (2d Cir. 2000). Oxford's
 27 determination that the beneficiary had not satisfied the
 28 plan's cost-share obligations was reasonable and supported
 29 by substantial evidence. Biomed's waivers were not based on
 30 a good faith inquiry into the family's financial condition,
 31 and it appeared that Biomed granted such waivers routinely.
 32 Given the beneficiary's failure to fulfill the deductible
 33 and coinsurance obligations or to obtain an appropriately
 34 vetted waiver, it was reasonable for Oxford to pay a reduced
 35 amount. These determinations were not arbitrary and
 36 capricious, and the judgment should be affirmed.

37
 38 For the foregoing reasons, and finding no merit in
 39 Biomed's other arguments, we hereby **AFFIRM** the judgment of
 40 the district court.

41
 42 FOR THE COURT:

43 CATHERINE O'HAGAN WOLFE, CLERK

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

Catherine O'Hagan Wolfe

